



UNIVERSITY OF TORONTO
FACULTY OF LAW



CRIMINAL LAW

Cases and Materials

Volume 1

Hamish Stewart

Faculty of Law
University of Toronto

2011-2012

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Faculty of Law, University of Toronto*

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1. INTRODUCTION

A note about these materials

These materials were originally prepared by Professors Alan Mewett and Martha Shaffer for use in the 1992-93 academic year. Since then, they have been regularly updated and edited by Professors Mewett and Shaffer, and subsequently by Professor Shaffer with Professor Hamish Stewart. We have also received advice and assistance from Professor Audrey Macklin, Professor Graham Mayeda, and Ms Nikki Gersh bain. This year's version of the materials was prepared by Professor Stewart.

H.S.

The criminal law is — as we hope you will discover — a fascinating and intellectually challenging subject; but it is also an emotionally and politically charged subject. Many of the cases you will read in this casebook are disturbing because they involve violence, often violence of a sexual nature. The brutality in these cases is disturbing for those of us who have not experienced violence firsthand — it is often more disturbing for those of us who have.

Even though some of the cases in the materials are painful to read, they are included in this casebook because they are the leading cases in their area. As you will see, many of the leading cases throughout the criminal law involve sexual violence committed against women or children. We recognize that these cases may be particularly difficult to read and have sought to alert students by marking these cases with an asterisk (*). While our notation system will not make these cases any less troubling, we hope that forewarning readers will provide an opportunity to prepare for the disturbing nature of the material.

The cases contained in this casebook, unlike those in many other casebooks, are not heavily edited. We have chosen to construct our materials in this way because of our view that it is important for law students to work with full cases rather than to work from heavily edited snippets. As a result, the facts of the cases as set out by the court have seldom been edited. Since many of the cases involve sexual violence against women and children, the facts are sometimes sexually graphic. Again, we have included these cases — despite their explicitness — because we believe that they are essential to a thorough understanding of the criminal law.

We hope that you enjoy the study of the criminal law and we welcome your comments on the materials or lectures throughout the course.

We are very grateful to Professor Graham Mayeda of the University of Ottawa for his comments on the 2005-06 version of these materials.

* * * * *

Most of the materials in this volume are drawn from the reported reasons for judgment of appellate courts, particularly the Supreme Court of Canada. Reasons for judgment of appellate courts are typically made available to the public on-line and are usually “reported” (*i.e.*, published) in both official and unofficial series of law reports. In

Canada, the decisions of the Supreme Court of Canada are officially reported, in English and French, in the Supreme Court Reports (S.C.R.), and are also readily accessible on-line through many sources, including a very useful website maintained by the Université de Montréal (<http://scc.lexum.org/en/index.html>). Decisions of provincial courts of appeal and other courts are not usually officially reported but are available on the Internet through the courts' websites or through CANLII (<http://www.canlii.org/>), and on LexisNexis Quicklaw or Westlaw Canada.

The most important criminal cases at all levels of court are reported in unofficial series of law reports such as the Canadian Criminal Cases (C.C.C., published by Canada Law Book) and the Criminal Reports (C.R., published by Carswell). (Both of these publishers are now divisions of Thomson Reuters). The C.C.C.s provide comprehensive coverage of the criminal decisions of the Supreme Court of Canada and provincial courts of appeal, as well as significant decisions of trial courts. The C.R.s provide less comprehensive coverage, but include annotations and brief articles by leading Canadian academics and practitioners. The law library subscribes to both of these reporters in hard copy and electronically.

Different law reporters have different formatting and citation conventions; in addition, unofficial law reporters provide numerous convenient features for the reader, such as headnotes and indexation, that are protected by copyright. In assembling the materials for these volumes, we have drawn on material that is in the public domain, or that is subject to Crown copyright and reproduced within the limits permitted for such material. We have on occasion imposed our own formatting and citation conventions on the excerpts. Deletions from the source texts are indicated by a row of five asterisks.

We are the authors of all the material that is set in the Arial font, and of all the footnotes.

M.S.
H.S.

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Some criminological generalizations

In *Crime, shame and reintegration* (Cambridge: Cambridge University Press, 1989), at pp. 44-50, John Braithwaite lists thirteen empirical generalizations about crime that are generally accepted by criminologists (the text intervening between the points has been omitted):

1. *Crime is committed disproportionately by males.*
2. *Crime is perpetrated disproportionately by 15-25 year olds.*
3. *Crime is committed disproportionately by unmarried people.*
4. *Crime is committed disproportionately by people living in larger cities.*
5. *Crime is committed disproportionately by people who have experienced high residential mobility and who live in areas characterized by high residential mobility.*
6. *Young people who are strongly attached to their school are less likely to engage in crime.*
7. *Young people who have high educational and occupational aspirations are less likely to engage in crime.*
8. *Young people who do poorly at school are more likely to engage in crime.*
9. *Young people who are strongly attached to their parents are less likely to engage in crime.*
10. *Young people who have friendships with criminals are more likely to engage in crime.*
11. *People who believe strongly in the importance of complying with the law are less likely to violate the law.*
12. *For both women and men, being at the bottom of the class structure, whether measured by socio-economic status, socio-economic status of the area in which the person lives, being unemployed, being a member of an oppressed racial minority (e.g. blacks in the US), increases rates of offending for all types of crime apart from those for which opportunities are systematically less available to the poor (i.e. white collar crime).*
13. *Crime rates have been increasing since World War II in most countries, developing and developed. The only case of a country which has clearly shown to have had a falling crime rate in this period is Japan.*

Canadian crime statistics and studies of trends in the commission of various crimes and in the criminal justice system are readily available in the Juristat, published by Statistics Canada and available at on-line at <http://www.statcan.gc.ca/pub/85-002-x/index-eng.htm>.

The materials you are now reading are primarily doctrinal rather than criminological. During the course, you may wish to consider whether there is, or should be, any connection between criminal law doctrine and these criminological generalizations.

